[Constitution]

Any citizen who does not know Albanian may use his own language through an interpreter.

ARTICLE 81

The Supreme Court is elected for four years by the People's Convention of the Republic and by secret ballot.

The courts of the prefectures are elected for three years by the people's councils of the prefecture and by secret ballot.

The judges of the subprefectures are also elected for three years by the people's councils of the subprefecture and by secret ballot.

A person may be elected judge many times.

The manner of election to all courts will be defined by law.

ARTICLE 82

The Supreme Court is the highest judicial body of the People's Republic of Albania.

The Supreme Court can arbitrate any conflict of jurisdiction between the civil and military courts as well as between courts and any other bodies.

Cases in which the Supreme Court acts as a court of original or secondary jurisdiction will be defined by law.

ARTICLE 83

The Supreme Court passes on the legality of all court decisions of the Republic.

Only the District Attorney may exercise an appeal against a summary decision of the courts. The decision given on such an appeal has no effect on the cause tried except when the law provides otherwise.

(b) *Department of the Attorney General*

ARTICLE 84

The Department of the Attorney General is the organ of the People's Convention which supervises the execution of the law by the ministries and other administrative bodies as well as by all public officials and citizens.

ARTICLE 85

The Attorney General of the People's Republic of Albania

2: Durham B-5 (ca. 1910)1928 EG1 Albania EG1

order his house to be burnt. Among the Dukagini the council has power also to destroy his crops, cut down his fruit trees, slaughter his beasts, and condemn the land to lie unworked for a term of years. An incredible amount of food-stuff is thus wasted. In this group not only the man who has taken blood, but all the males of his "house," are liable for blood, so they, too, have to fly. The "house" is the home maybe of a whole family community—forty people. But the law is carried out to the last letter. Such desolated spots have I seen. But "It is the Canon, so must be obeyed," was the answer to any remonstrance I made. The women and children may scatter and find shelter in other houses if they can; they usually do. A man can save his house if he can return to it and defend it three days successfully, so that the men sent by the council cannot set fire to it; I saw "a very brave man" in Berisha who had three times saved his house thus. Or a man can save his house by inviting the head of another mehala to act as house lord and defend it with his own men. This might cause severe fighting. The council, to prevent this, then as a rule agrees to burn the house only and spare the property. The amount of property to be destroyed was always to be decided by the council.

In Maltsia e Madhe a man was allowed to redeem his house by paying from £5 to £10 by a modification of the old law.

In addition to the burning of the house, in all tribes a fine has to be paid. Fines are paid in sheep or cattle. The fines varied in different districts. In both groups a fine had to be paid to the Turkish Government. In the case of Maltsia e Madhe this was paid to the Sergerdé and the Bulukbashes, who represented the tribes in Scutari. It was generally paid punctually. "Lek decreed that a fine must be paid, so it must be." Moreover, the Turkish Government had a certain hold on all the nearer tribes, for it could hold as hostage any member of a tribe which owed blood-gelt and came to market at Scutari. The outlying tribes of Dukagini by no means always either notified or paid for their murders.

Feuds being very weakening to a tribe, the headmen of the tribe or friends of the family would attempt to stop the feud. Blood-feuds of the Dukagini and Pulati tribes are settled in the mountains; those of Maltsia e Madhe were settled in Scutari before the representatives of those tribes who lived there.

The peace-making is preceded by the "gjaksur" (he who owes blood) sending some friends to the "zoti i gjakut" (lord of blood) to ask for "besa" (promise of truce). This may be granted and further prolonged, and during the truce the gjaksur and his relatives are safe. To end the feud, "me paitue gjak" (pacify the blood), twenty-four con-jurors are needed to swear the peace oath with the gjaksur. The

693 plaintiff (lord of blood) has the right to name them. Or they may be
609 named by the "bairaktar" (head of the tribe). This is only done if the
682 matter cannot be settled by con-jurors chosen by the plaintiff.

The gjaksur has the right to object to two of the con-jurors, who must be replaced by others. The con-jurors are all men of standing in the tribe ("plect," elders; "kren," heads). They examine the facts and hear the accused ("gjaksur") and decide if peace can be made and on what terms. If all twenty-four agree to take the peace oath with him he is then reckoned innocent, and he and his family do not owe any further blood, but pay blood-gelt to the zoti i gjakut. This varied from about £25 to £50. If they all agree but one, he may be replaced by two others. If still no agreement is come to, the gjaksur may bring more con-jurors, who are members of his family, up to the number of eight.

Agreement having been come to, the whole party goes into the
[78 church (or mosque) before which the council has been held. In the
608] church the candles are lighted on the altar, and in the presence of the priest the gjaksur swears his innocence. He no longer owes blood and is, therefore, innocent. Next swear those of his family who may have been summoned, and then all the con-jurors. After this the gjaksur and the zoti i gjakut frequently ratify the peace by swearing blood brotherhood (*v.* Blood Brotherhood).

By Moslems the oath is sworn in the mosque.

693 Each of the con-jurors has to be paid a small fee for his services. The plaintiff in some cases can thus annoy the accused by insisting upon the full number of con-jurors allowed by the law. A priest counts as twelve con-jurors, and sometimes an important elder is reckoned as two.

628 The oath being taken and the blood-gelt paid, the man is free to return to his burnt house and repair it. Being as a rule of solid stone, only the roof and woodwork need renewing. If he is a popular man, other members of the tribe help him both to pay the fine and start life again.

627 To Mgr. Miédia, now Archbishop of Scutari, I am indebted for an
682 account of how two families can make peace voluntarily without appeal to the law. Having ascertained by means of emissaries that peace will be acceptable, the gjaksur and his relatives choose a feast day and enter the house of the injured family with their hands bound. A child placed the wrong way round in a cradle is carried with them. If the peace offer is accepted the lord of blood loosens their bonds and puts the child straight in the cradle. The blood-gelt is then arranged and paid. This custom existed among the Dukagini.

682 The above all refers to a murder committed by one man. But it
628 may happen that several men all fire at once and kill a man. A search

682 house to borrow sugar for the funeral feast—a request which was refused.
576 As I was the priest's guest, I could not attend the funeral; but it must have been interesting, for the murderer was one of the chief mourners—perhaps honestly so. My suggestion that he should be handed over
[692] to the Turkish authorities in Scutari for punishment was not received at all well by anyone; and it was pointed out to me that had it not
771 been the Will of God the man could not have died of only two bullets. Many men live with more in them. This curious case suggests that in earlier days the house lord may have had the power of life and death over his subjects.

MURDER OUTSIDE THE TRIBE

682 The tribe inflicts no punishment. The Turkish Government got its
628 fine if it could. Fines, in fact, being part of the Government's revenue, no effort was made to stop blood-taking by it.

The relatives of the murdered man take blood for him, of the family of the murderer if they can. An intertribal feud may become so intense that two whole tribes are "in blood." Peace can only be established by
[727] a Council of Elders of both tribes. When made, it was sometimes strengthened by marrying the daughter of one party to a man of the
[606] other. Or blood brotherhood may be sworn. The blood-gelt, fines, and the peace oath are as already described.

WOUNDING

683 A wound inflicted intentionally comes under the laws for blood. The house of the guilty man can be burnt and his goods can be seized (this in Dukagini), as in case of murder, if the elders examining the case think fit. He is liable to have his own blood taken by the injured man or his relatives. Blood of his son and brother may be taken (Dukagini).
[693] Con-jurors up to twenty-four may be called, but according to the nature of the injury a smaller number may suffice. The fine paid is in proportion to the wound, and is decided by the elders. The price to be paid for a death—a fatal wound—is taken as standard, and the wound reckoned as one-half, quarter, tenth, etc., of a death price. It is, in fact, payment for the amount of blood lost.

In the case of a wound given accidentally, the house is not burnt, but the wound must be paid for. A man I knew, playing with a rifle, accidentally shot a woman through the foot and, unfortunately, made her lame for life. He had to pay fifteen napoleons to her husband (for damaging his property), and had to undertake to pay a further fifteen should the woman die at any future time as a result of lameness.

Government and Law

The question as to whether a wound had really been given accidentally was, of course, a fertile source of dispute. In a land where everyone carried fire-arms there were surprisingly few accidents. 683

THEFT

Theft within the Tribe.—The procedure for trial is the same as with murder. The plaintiff appeals to the bairaktar if he has previously not been able to obtain redress by appealing to the head of the family which has robbed him. 685

A sufficient number of con-jurors must then be found before whom the accused may swear his innocence and who will swear it with him. [693]

There is a fixed number for various thefts. Eight for horse-stealing, six for cattle-, and two for sheep- or goat-stealing.

A thief found guilty has to pay twice the value of the article stolen: give two sheep for one. Half the value of the article stolen is divided between the elders who have tried the case. For anything stolen off Church land as much as ten times the value may be demanded; and in olden times I was assured that a fancy value was placed upon a stolen cock—possibly because it was held to have great power against evil spirits. If a man's only cock was stolen, it is easy to see that these might suddenly attack him when unprotected.

If the house or cattle-shed is broken into, an extra fine of about £4 has to be paid.

The number of con-jurors depends on the value of the stolen article, and may be as many as ten.

Theft from another Tribe.—As in the Highlands of Scotland of old, lifting cattle from across the border of another tribe was considered rather a sporting event than a crime. 685 721

Mountain bands who raided the environs of Scutari and carried off Turkish goods were heroes. The practice was precisely the same as that of the Chetniks of Montenegro and the Hayduks of Bosnia. This custom had been modified, and the tendency was to arrange intertribal theft by arbitration—the procedure being the same as that with theft within the tribe, except that heads of both tribes took part in them.

This was usual in Maltsia e Madhe. But in the Dukagini tribes, especially the distant ones, much cattle- and horse-theft went on between tribes who, owing to blood-feud, had not a "besa" (peace oath) with each other. When I was in Nikaj, one of the wildest of the tribes, Nikaj and Krasnichi were on the worst terms. Watch-fires twinkled at night on the Krasnichi mountains, and talk was all of horse-stealing and cattle-lifting.

[Constitution]

and his assistants are appointed by the People's Convention. 693

District attorneys of the prefectures and subprefectures are appointed by the Attorney General. [646]

ARTICLE 86

All district attorneys are independent of the local governmental units and are responsible only to the Attorney General, from whom they receive orders and instructions.

ARTICLE 87

District attorneys are authorized to initiate penal actions and also to exercise the right of appeal as well as the right to intervene during a judicial or administrative trial. District attorneys can exercise the right of appeal against summary decisions of the courts and other administrative organs when such decisions are illegal. [692]

ARTICLE 88

The district attorney of the military courts of the national army of the People's Republic of Albania and other military attorneys are appointed by the Commander-in-chief of the armed forces of the Republic. [701]

TITLE V

Relation Between the Executive and Administrative Departments

ARTICLE 89

The Presidium of the People's Convention may annul or suspend decrees, instructions, and decisions of the government when they are unconstitutional and illegal. 642

The government may annul or suspend decrees, ordinances, instructions and decisions of ministers when they are contrary to the laws, decrees, instructions and decisions of the government.

ARTICLE 90

The Presidium of the People's Convention and the higher people's councils may suspend any illegal or irregular act of the lower people's councils. 643 631

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692 It had its defects, of course; sometimes a judge took a bribe or a man bore false witness in spite of the deterrents devised against such malpractices. Yet the legal system worked well on the whole, was often speedier and always cheaper than any European counterpart, and [671] left few crimes unsolved. What chiefly precluded modern Albanian governments from adopting the unwritten laws, however, was their 361 diversity. This was mainly due to the isolation in which the geo- 221 graphy of their country compels the mountaineers to live, and the fact that they do not settle permanently at altitudes more than 3000 feet above sea-level, but live on the lower slopes of the mountains enclosing their settlement and in summer graze the upper slopes as far as the mountain crests, where a carefully demarcated boundary indicates the end of their property.

623 Communications were as dangerous as they were difficult. As 784 a result the principle of delegating one man to represent a big geographical unit was not established until modern times. It was regularly practised in small units, where the delegate had to travel only a short distance, and that through known, if not friendly, [619] country. It was enough that one man should represent his house at a General Meeting of his village or tribe, but it was unthinkable to the mountaineers to hold General Meetings at which laws for the whole area might be passed as in an English Parliament. At best two adjoining communities might meet to settle a dispute about their common boundary or a road or forest, and after much argument make laws about the matter that were binding on both. 671 More usually, a village or tribe drew up or revised rules for its own governance without any regard to what others, ten, twenty or fifty miles away, were doing. The outlines of a law might approximate in different groups, especially if there had been some ancestral connexion between them, but the details of the law were as varied as the minds that shaped them in the various communities.

[693] The isolation in which it lived bred a fierce individualism in each 221 community. This prevented it from submitting to the laws of another, except in an emergency. Then it might call in an elder from outside to decide a case and afterwards consider his ruling law. Such an elder had to be specially renowned for wisdom and sound judgement, and with one known exception his influence never ran far beyond the distance he could ride in safety and comfort from his own community.

That exception was Lek Dukagjini, an ancient law-giver of such

4 n [the legal system -- Analyst]

10:Hasluck F-5 (1926-1939)1954 EGl Albania EGl

692 [622] If the commoners did not like one of his[1] even if made in concert with the headmen and elders, they were not bound to abide by it and could compel him to re-examine the case. Neither he nor a headman could, singly or in combination, fine a tribesman without first securing authority from the tribe. After all, he and the headman might have a personal grudge against the man and might fine him for no other reason. To take an example [619] from the non-tribal valley of Bulqizë, Miftar Meta the bajraktar and Lam Isaku his assistant were much respected and admired but they had no power, on their sole responsibility, to fine a man from Fushaj, their own village. Still less had they power to fine a man from another village in Bulqizë. They could not act in either case [623] until they had secured the backing of the culprit's village at a general meeting. Nothing less, it was felt, guaranteed the impartiality of the sentence.

693 623 If a bajraktar misconducted himself, all the headmen and commoners of his tribe, or possibly the commoners alone, sat in judgement on him. They could not ostracize, expel or burn him out like an ordinary criminal; he was too inherently a tribal institution for that. But they could, and did fine him. In 1907,[1] the Kryezi tribe assembled in plenary session, one man from each house, and fined its bajraktar and headmen 100 rams and an ox for some judgements they could prove to have been unjustifiable and prejudiced. The commoners could also ask an erring bajraktar to give a rifle or other valuable as security for his good behaviour in the future.

693 The misconduct for which a bajraktar was fined was seldom more heinous than sending his sheep to pasture on another's ground or pronouncing a biased judgement. On the whole, each was so carefully selected and trained by his predecessor in office that he rarely committed the graver crimes. When one did, he was sure to be so 'strong', i.e. influential, that the tribesmen thought it more prudent to close their eyes to his iniquity. There was much grumbling at the venality of bajraktars, but neither the tribal law nor the Turkish government took cognizance of this offence. If 693 a bajraktar[1] serving as judge or arbitrator, took a bribe, the only 687 remedy lay in the individual tribesman's freedom to choose another law-giver next time. If a bajraktar accepted a 'present' for doing a favour, there was no remedy at all. His victim could only comfort himself by noting how God, or Allah, punished such greed. It was

[1] [the bajraktars--Analyst] [2] [the local military, administrative and judicial head--Analyst]

[1] See Appendix, Document III, p. 271.

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popularly believed in Shkrel that the three sons of Vatë Marashi, the bajraktar, and the three daughters of the Voivode Preng Mirashi, had turned out badly because the deeds of Vatë and Preng had been evil.

In time of war a bajraktar from the north-west group received triple pay and triple rations. A bajraktar of Shalë received double pay and double rations, one portion as a person and the other as standard-bearer. He also received pay and rations for three servants, two of whom followed him to the war both to guard and to serve him, while the third, a specially trusted man, remained behind in his house in Shalë as guardian of his property, women-folk and children. The allowances for these servants were only what ordinary soldiers received, food and *katik* (pocket-money: in Turkish, any relish eaten with bread) at the rate of one grosh per day, which was barely sufficient for their tobacco.

As an administrator a bajraktar was unpaid in so far as he had no fixed salary. He earned something, however, by his judgements, for which he was paid at the same rate as an elder. In the Malësi e Madhe, as often as he appointed elders, he too received a fee, although they did all the work and he did not stir from home. If they could not agree on a verdict, the litigants appealed to him. He then received a double fee, one the same as the elders' and the other in respect of his own journey to the scene of the quarrel. In other tribes or groups of tribes he did not get off so lightly; he had always to judge the case himself before he received any payment. The fees varied with the importance of the case and the rapacity of the bajraktar. In the tribal, but not in the non-tribal, areas any fines imposed were divided between the bajraktar and the headmen or 'good families' of his tribe. In the Malësi e Madhe a bajraktar who was summoned to Shkodër received ten grosh (50 koronë) per day from the Turkish government for his expenses. But everywhere a bajraktar's best source of income was bribes.

The bajraktar was both the military and administrative head of his tribe. His military and administrative precedence came 'from the staff in his hand', the flag stick of Turkish donation, but descent was the test for social precedence, and priority of descent was not always his. In many tribes there were 'good families' who descended from an older brother or a social superior of his ancestor, and on that account had, generation after generation, taken social precedence of his family.

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and first cup of coffee, which were offered to any man of standing. 554
He lived in the same style as the rest of his social unit and was their equal in the eyes of the law. The latter point was clearer in the old days. If he were killed an ordinary blood feud ensued; if this was compounded, the price of his blood was no higher than an ordinary man's. If he killed someone, his life was forfeit in the usual manner to his victim's family. If he committed a crime against the community, he was liable to the usual punishments for such a crime and could be asked to give the community a rifle or other recognized article as security for his good behaviour in future. He had also the same social obligations as humbler tribesmen. These included serving in the tribal 'army', feeding the tribal 'youth', doing forced labour for the government, sharing communal labour for the village, and subscribing to public objects like buying an extra piece of communal pasturage or forest. He had also, like common men, to do military service and work annually without payment for a short period on the roads.

As a legal personage, however, an elder was on a higher footing 693 622 613
than ordinary tribesmen. If, for instance, a village elder were to witness an oath in a case grave enough to require twenty-four jurors, his single person counted as the twelve jurors who were left unspecified by the judging elder. Another elder did not count as high, for a village elder ranked higher than a kin elder, and the latter higher than a brotherhood elder. An elder's duties were twofold, administrative and legal. The former were an expansion of the master's, for he had to take the same fatherly care of his brotherhood, kin or village that a master took of his household and had to run it on much the same system. On the external side he had to present its case skilfully to higher authorities and defend it from oppression. Internally he must maintain law and order by checking the chief evils, assassination and damage to property. He had to try to nip quarrels in the bud by persuasive reasoning, arbitrate when they menaced and judge when they developed. He had to lend the weight of his presence not only to the giving of an oath but also to the bequeathing of a legacy to church or mosque, the planting of boundary stones, and (generally) the separation of brothers. The embodiment of the tribal law, he was at once advocate, judge and law-giver.

An elder's age and wealth did not matter to the ordinary 613
members of his social unit, who drew no invidious comparisons 554 622

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compulsory. Any who failed to attend and could not justify their absence were fined. Together with the general public, they had to investigate complaints against a senior elder or a bajraktar, and if they found him guilty, they had to fine or ostracize him. In their attempts to prevent breaches of the peace they were entitled to try any method from peaceful persuasion to forcible restraint by the whole village. When, for instance, a tribesman refused to accept a judgement that was demonstrably lawful and unbiased, they could call a General Assembly to discuss the case. A public fine generally ended the man's obduracy. If not, the village elders could ask all the headmen and 'soldiers' of the tribe to come and bring him to his senses by threatening to destroy his house and property. They continued to apply the old law, the public preferring these methods to those of modern officials.

Canon elders were subordinate to the bajraktar and the voivodes of their tribe, acting as their assistants at General Assemblies.

In non-tribal districts like Shpat and Martanesh the canon elders of Mirditë were represented by a body of men called 'local elders'. These were hereditary, found in every village and restricted in their law-giving to their own village.

Another type were called 'specialist elders' in the southern tribal areas, 'regional elders' or 'mountain elders' in Martanesh, and plain 'elders' in Theth. The great majority owed nothing to heredity and everything to themselves, being ordinary men who had gradually built up a reputation for good sense, conciliatory temper and especially knowledge of the mountain law. A few were hereditary elders who had displayed the same qualities. Except in a few unusual cases they did not hand on their gifts or their position. As it required time to build up their reputation, the generality were older than herditary elders when they attained this position. They began by settling petty troubles within their brotherhood and gradually as their reputation grew, they extended their sphere of action to their kin, village and district in succession. A brotherhood elder must not interfere in another brotherhood, a kin elder in another kin or a 'local elder' of Martanesh in another village. But the specialists might travel far and wide outside their own social unit judging and arbitrating wherever required. Provided that they judged according to the law, their judgements were binding and overrode any delivered previously by a local man. As gifted men do not arise at will, they were never common but were found only

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here and there. After the introduction of modern codes of justice they had little chance to emerge.

Above all elders, in both Mirditë and the adjacent tribes, came the Gjomarkaj family. This family was regarded as the source of all knowledge of the mountain law and represented the final court of appeal. The villagers of Martanesh carried many of their graver troubles to its head, but at the same time had often a 'special elder' whom they consulted in such cases. Selim Peshku, who died about 1910, was the latest example. The tree under which he sat dispensing justice in Martanesh is still shown. In the north the bishop or a specially gifted priest was the ultimate referee. They were consulted not so much for their knowledge of the law but because of their reputation for probity.

Functionally the brotherhood elders of Mirditë were represented in the Malësi e Madhe by the 'ward elders', who ruled and judged in their own small community, the village ward in which they lived. They were more commonly called *gjobtarë* ('fine-collectors') from their primary function of collecting fines. As legal functionaries they resembled specialist elders rather than brotherhood elders because they were ordinary tribesmen and owed their position as elders, not to hereditary right, but to special appointment. They were selected, however, not by the public like the specialists, but by the local bajraktar or voivode. On taking up an appointment to judge or arbitrate they were known as 'soul elders', on account of the solemn phrases with which they were commissioned. The commissioning bajraktar or voivode first asked, 'Do you pledge your souls, elders, that it was so?' On receiving their assent he laid a stone on the ground before them, saying, 'With body and soul, with a stone in front of you and with God's justice set these two people straight in any way that you can see'. It goes without saying that only upright men were willing or were asked to accept a charge laden with such danger to their soul after death. These northern ward elders had no connexion with the ward elders of Godolesh near Elbasan, who were seven in number for the six wards (mehallë), all subordinate to the paid non-hereditary headman and his two assistants.

Another functional type, which was most important for the repression of crime and was found everywhere, was constituted by 'juror elders'. When trying a case, the judging elders might decide to make one of the disputants take an oath that he was not guilty.

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CHAPTER XIII

THE ADMINISTRATION OF JUSTICE

It was the law that every injustice done by Albanian to Albanian must be righted by means of elders and pledges, not by killing. This was crystallized in the adage, 'Killing for a fault is not permissible'. If, for instance, a man caught his neighbour stealing his sheep he had no right to kill him. He should bring him before an elder who would set the proper legal machinery in motion against him, even sending him if necessary before a General Assembly.

Associated with the elders in the administration of justice were the bajraktar and voivodes with, in Mirditë, the Gjomarkaj family. They were not judges in the Western European sense of public officers appointed to administer the law. They were men who judged by right of birth or weighty personality within their native area and they were permanent officers, irremovable so long as their physical powers lasted. They were always illiterate, trained only in the school of experience; practical men and not theorists. It was their special function to preserve the peace in their area by wise and just judging. They were in the literal sense of the words Justices of the Peace. But they could only interpret and apply the law. To make it was the prerogative of a General Assembly of the tribe.

As administrators elders received no fees, nor did they receive any when serving as juror or murder elders. But they were almost invariably paid for judging or arbitrating. In the Dibër area their fee was simply called 'pay', but it was camouflaged as 'sandals' in the north and Mirditë, and as 'coffee' in the south. In north Albania, where the formula was 'fee by the jobs', the fee was fixed and varied with the case. In Lumë, for instance, it was six Turkish pounds in a murder case and a watch worth one napoleon in a water dispute. In Mirditë it was five grosh for a case slight enough to finish in one morning and ten grosh for more serious cases in which the elder, stone on shoulder, had to give his oath. Ten grosh was the canonical fee in Kastrat after the Convention of 1892.[1] In Perlat the fee was adjusted to the client's means, an oke

[1] See Appendix, Document V, § 17, p. 264.

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of coffee if he were poor, a sheep if he were rich. Farther south, the fee varied with the elder's importance and the bargain he made beforehand. In Martanesh it was ordinarily one Turkish pound, but Selim Peshku accepted this only in easy cases; he asked, and was gladly given, three or even five in more complicated cases. Cen Elezi of Dibër asked in 1938 twelve napoleons from each of two cousins who were quarrelling about a boundary. Two elders employed in a dispute were usually paid alike, each disputant paying half the total. But when each disputant bargained separately with his elder, one elder might be paid more than the other. Even where fees were conventionally fixed as in Lumë, an elder often bargained for a larger one. An elder who came from a distance was naturally paid more, as he had to spend at least one night and two days away from home. An average fee in Shkrel for such cases was one napoleon, whereas for cases near at hand it was a silver Turkish dollar in Turkish times or 10–20 koronë in 1932. Almost always an elder was given a sheep in addition; 'an elder without a sheep doesn't do', it was said. Elders could not exact prepayment; it was evidently felt by the old law-givers that if prepaid they might be tempted to default on the work. At the same time they had to be protected from the litigant who tried to default on their fee. A litigant had, therefore, to deposit a rifle or a silver watch or a silver tobacco box or the like at the outset of the case as a pledge that he would pay the fee at the end of the case. Judgement pronounced, he paid the fee and was given back his pledge. Because of this arrangement elders were called 'pledge elders' when they undertook work involving a fee.

In addition to his fee and sheep an elder also expected at least one meal for himself and his party. It had to be of the highest class, with meat and rice pilaff, and the meat had to be goat, ewe or ram, more rarely beef and never that inferior thing, chicken. When the elder's party was small, the sheep-breeders of the north gave *mazë*, a delicious dish compounded of butter, cheese and maize flour. In Kosovë the meal was generally taken from the richer disputant so as to save the poorer litigant expense, or from the one who had insisted on calling in elders. In Martanesh it was taken from the one who had caused the trouble. In Shalë, on the contrary, each elder ate at his own client's expense except in road cases, where both elders and their suites ate at the expense of the litigant in fault. In Zerqan, if the case dragged on so long that the

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elders required two meals, each disputant had to provide one; if 693
the case was shorter and only one meal was required, the two disputants halved the expense and both sat down at the table with the elders, not always with too good a grace on the loser's part. If dinner-time found the party up on the mountain, far away from either disputant's house, the food had to be sent up to them there. If supper-time found the party still at work or only just finished, they all ate and slept in the house of one disputant. The expenses of feeding the elders and their party had, despite its burden, to be faced by the poorest man when wronged, for without an elder's intervention he would be trampled on by his fellows. The thought of its cost sometimes acted as a deterrent to the litigiously minded.

Litigants themselves chose the elder who was to judge between 694
them, much as Englishmen choose their lawyer. In non-tribal areas litigants were completely free to select whichever elder they trusted most, irrespective of where he lived. In tribal areas they were obliged to choose one from their own village, at least to begin with. It is obvious that such an elder was likely to have some independent knowledge of the case and its rights and wrongs. In Mirditë and Kthellë a litigant who insisted on going outside his own village had to engage the bajraktar or a voivode of his tribe, not a smaller man, and must not go outside his tribe. The higher fee required by the bajraktar and voivode was usually enough to make the man stick to his own village. If a quarrel was not bitter, the two parties often agreed to entrust the case to a single elder and to divide the cost of his fee and meals. They then said to each other, 'Whom shall we have?' and mentioned various names. After debating—usually at some length—the merits of the owners of the names they fixed on one. Each then asked the other ceremoniously, 'Have you confidence in this elder?' 'I have', the other replied. Great importance was attached to this unanimity; it made the elder's decision more binding on both disputants, procuring in fact judgement by consent.

The preliminaries over, the two litigants contacted the elder, generally by going to his house, and told him their trouble. 'Are you willing to leave it to me?' he would ask. On their consenting formally to do so he stated his fee. This depended in Mirditë on the importance of the case and elsewhere on the importance of the elder, the distance he had to travel, and the astuteness of the litigants. In Martanesh a gold Turkish pound was commonly

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promise—if they did, there would be no shooting. Each had to give this guarantor a pledge of the usual type—rifle, revolver, watch—which was laid before the elders. The elders then delivered their judgement, the two disputants accepted it and had their pledges returned. If a disputant broke his promise and shot his rival, the village Council of Elders would fine the guarantor, asking him why he had let the man break his word. In this way, through the medium of the guarantor a good deal of pressure was brought to bear on the loser to make him keep the peace. In the Elbasan area it was agreed that a disputant who gave a meal to the elders thereby accepted their judgement, so that the strong instincts of hospitality came into play. In Mirditë the elders whose decision was flouted bade the disputants 'go to Shupal (St Paul's Church) or the Grykë e Oroshit (Defile of Orosh)', i.e. bring the matter up before the next General Assembly for the tribe at one or other of these famous meeting-places. If the loser would not abide by the decision of the General Assembly he could be fined by the tribe, ostracized or even banished for a period. Occasionally a strong man subjected to such sanctions killed the offending elder; by so doing he involved himself in yet another blood feud. In Mirditë and adjacent areas emphasis was laid on the fact that the recusant loser had himself chosen and approved the offending elder, and had signified the same by giving him a pledge. By these acts he had stripped himself of the right to take back the pledge or to express active disapproval of the judgement given. Only in the event of the judgement's being demonstrably biased or unfair were the disputants allowed to challenge it. 'A crooked judgement can be annulled', the law stated. Often the crookedness was established by the loser going secretly to ask another elder for his opinion. In that event the disputant had everywhere the right to appeal against the judgement and to call for a new examination of the case by another elder or pair of elders. In some parts, the law ruled that 'the law does not admit of elder on elder, and trial on trial', and that a man who had 'chosen and approved' elders had no right to call in others.

Frivolous changing of elders was restrained by the extra expense this entailed. In Lumë, for instance, if two brothers were displeased by the manner in which their chosen elders were dividing their property, they could call in one more elder, a *staraplak* (ancient), whose decision was final. But his regulation fee was five

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693 napoleons. In cases other than those of division of property he received only two napoleons. He took over the two pledges from the original elders, and as these were redeemed from him at a price by the two disputants, the first pair lost their time and trouble and received nothing. If a disputant in Martanesh was disgruntled he could call in a regional elder, but he had to pay, not only the fee of the elder whose judgement he questioned, but also that of the regional elder. One of Selim Peshku's devices for making a recalcitrant litigant keep the peace was to bid him bring another elder and he, Selim, would pay the fee as well as return the litigant's pledge. The man, knowing no elder would reverse a decision by Selim Peshku and somewhat stunned by the latter's generous offers, invariably submitted.

[694] Another check on frivolous lawsuits was the arrangement under which the litigants were not allowed to tell their stories to the second pair of elders. These were briefed by the first pair, apart from the litigants, who were also required to stay with their comrades among the general public while the new elders argued out the case. There was, in theory at least, no possibility of the new elders being 'got at'. In Mirditë, the head and fount of the law, rules were more stringent. The disputants were not allowed to choose the second pair of elders; this was done by the first pair. They had also to hand over to the second pair the pledges they had taken from the disputants. If the second pair found the first pair's judgements sound, the disputants had to pay a fee to both the first and the second pairs. If, however, they found the first pair's judgement unsound, they, by this time the holders of the pledges of the litigants, were paid their fees by the first pair, who in addition got no fee at all for their previous trouble. A third pair of elders might be chosen in Mirditë but no more. After that it was a matter for the expensive chieftains or the Gjomarkaj family to settle. In Kurbin, too, it was the rule that when elders failed to come to an agreement, it was they and not the litigants who chose the second pair. In disputes about water, land, boundaries and the like up to sixteen elders might be chosen, two by two. If any pair came to an agreement, their predecessors and the litigants had to accept their decision. Each of the successful pair received a napoleon as his fee; the unsuccessful elders received nothing. When the sixteen possibilities within the tribe had been exhausted without result, elders were called in from an outside tribe, naturally

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at an enhanced fee. These outside elders were generally taken from 693
old, important tribes like Mirditë, Beshkash, Kthellë and Lesh, or from Krujë town.

Here then we have the working basis of their judgements. The elder or elders originally judging the case had an interest in settling the matter because they received a fee for their judgement. They had a further interest in settling it quickly because their fee was fixed at the outset, and by contrast with lawyers in a western law court they received no more if the case dragged on. Delay over one case also entailed a risk of being unable to undertake other cases that might arise. They had an interest in not splitting hairs with each other, for that might preclude their coming to an agreement and cause their supersession by others, with consequent loss of fees. They had an interest in not giving a crooked judgement because that might lawfully be upset, again causing them to lose their fees. They had, lastly, an interest in not taking bribes, for an elder who was detected in that was detected only once; he was never again asked to be an elder.

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Disobedience to accepted authority was not permitted to an individual tribesman, a villager or even a tribe if that formed part, like the Mirditë tribes, of a group of tribes. Several of the Documents end by indicating the penalties that await tribesmen who defy the authority of the General Assembly that had laid down the preceding laws for the public good.

Examples of penalties prescribed are a fine of 3000 grosh, a choice between being burnt out or paying an ox to the tribe and 300 grosh and a ram to the government's representative, and a sentence of having one's house burned down and oneself expelled. Number XIII, the Fascist document from Mat, simply declares that any delinquent will be called a traitor. In each case the whole tribe was to meet again in General Assembly and go in a body to carry out the sentence. According to Document XI the breaker of a pledge guaranteed by the General Assembly of the Elders and Commoners of Kurbin was warned that the said Elders and Commoners would be obliged to burn his house and expel him.'

Elders were seldom tried before a General Assembly. They were kept in check by the fact that if their judgements were found unfair they lost not only face but also fees, for they were seldom asked to judge again. If there were complaints against one he was first asked, like an erring bajraktar or voivode, for a pledge; if he refused to give it he was haled before the General Assembly.

If a disputant flouted an elder's just and carefully considered judgement, he found himself before a General Assembly. For an elder represented a lawful authority. 'If you don't like the decision, go to St Paul's church or the Defile of Orosh (*Grykë e Oroshit*)' was the formula in Mirditë in such cases, church and defile being the favourite meeting-places for the General Assemblies of all its five tribes. If the Assembly upheld the elder's judgement, the penalty usually imposed was banishment for three years for the culprit and his family, the burning down of his house, the destruction of his crops and trees, and leaving his land untilled until he returned.

Sometimes a village was a public nuisance, harrying travellers, stealing its neighbours' beasts, cutting off their irrigation or mill water, trespassing on their forest or grazing, and so on. The bajraktar, voivodes, elders, and all the commoners in the rest of the tribe then gathered in General Assembly, one man from each house, and brought the village to its senses, fining the more harmless

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CHAPTER XVI

THE OATH

I. OATH-TAKER AND COMPURGATORS

695 Elders faced with a knotty case concerning property might put one of the disputants to the oath. The victim of the crime, suspecting who had committed it, might test his suspicions by asking that the man should make oath in public that he was innocent. It was only by oath too that a suspect could clear himself; mere protestations of innocence were not enough. 'Denial means an oath', said the law. The oath (*be*, oath; *beja*, the oath) was in fact a most efficient instrument of tribal justice, cutting gordian knots for elders, settling the ownership of property, clearing the innocent and convicting the guilty. It was equally efficient as an instrument of social cohesion, binding the tribe when occasion arose to concerted action against crime within and danger without.

The subject is difficult to understand, because of its remoteness from English practice. The following example from life gives the general scheme of the ordeal, for such it was. The story comes from Labinot, a village well south of the tribal area; but with one or two small exceptions each item might have come from anywhere in the tribal north. It is a criminal case, but if the words 'claimant' and 'oath-taker' be substituted for 'accuser' and 'suspect' it can be read as a property dispute. The general procedure was the same in both cases.

A Moslem of Labinot called Qazim who had lost a plough-ox suspected Asllan, a fellow-villager, of having stolen it, and through the headman demanded an oath from the suspect. The latter, though protesting his innocence, agreed. A few days later when the accusation was formally laid at the Village Assembly, Qazim, as was his right, immediately began to name half the number of twelve compurgators insisted on by the headman. These were chosen on account of their connexion with the accused—had this not existed he could have refused to accept them. Asllan was then told to find six other compurgators and attend the Assembly with them again a week later.

[693]

The week was spent by the compurgators in investigating the case, by the accuser and accused in visits to the compurgators,

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685 oath', but in theft cases he was often called the 'thief', and this
695 from the outset of the case until he was cleared. Father Gjeçov also calls the oath-taker in criminal cases 'the accused', but this seems a literary term chosen by himself rather than a popular usage in Mirditë. In theft cases, the accuser was most often described by a periphrasis—being called in Godolesh the 'plaintiff', in Mirditë 'the owner of the lost property', in Martanesh 'the owner of the stolen property', 'the injured party' or 'the man robbed', in Fulqet 'the injured party', and in Zerqan 'the owner of the property'.

695 In murder cases, save for Father Gjeçov's occasional 'loader',
[662] the accuser was always called 'the man with the feud', the 'avenger' (lit. 'the owner of the blood'), and in disputes about property 'the plaintiff'.

When an oath has been sworn by a suspect or a claimant to property, the innocence of the one or the claim of the other had generally to be established by the oath of a predetermined number of compurgators.

[673] It was legally impossible for a suspect to clear himself by his unsupported oath. In the words of a proverb 'A wolf licks his own flesh and eats a stranger's'. An oath-taker might not flinch from perjury in order to establish his own innocence or his claim to a property, but as compurgator he was likely to be more scrupulous. So the law said there could be no complete oath without a jury. But as usual it made exceptions. When a suspect or claimant was ordered to swear one of the very solemn oaths in which perjury involved the extinction of his whole family, his personal stake was so great that a jury was dispensed with. The best example comes from Martanesh, where a jury was necessary in oaths sworn on the Koran or bread, but not in family oaths sworn at Balim Sulltan's grave.

[694] It was both the right and the duty of the members of the jury to gather all available evidence about the case and to make up their minds about its rights and wrongs before they came finally to court to record their verdict. An interval was therefore left between the nominations of jurors and the final oath-taking, in order to give them time to investigate the case. As a last step in their collection of evidence they then gathered to hear the oath-taker take the prescribed oath. They brought in their verdict by exercising their right to decide whether or not to take the oath. To

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return a verdict in the oath-taker's favour they turned up on the appointed day to repeat his oath themselves in public. They returned one against him in either of two ways; either they refused during the period of investigation to take the oath, or they did not turn up to do so on the appointed day. In the case of early refusals some modifications were allowed, but at the final oath-taking the law was rigid. If even one compurgator failed to turn up the suspect or claimant lost his case; there was no question of majority vote. They took no oath until the end of the case. They were not sworn, as elders were, to investigate fairly and to bring in a true verdict.

The general rule for selections was that half the compurgators in criminal cases were chosen by the oath-taker and half by the accuser or by the elders: the latter in Mirditë, Godolesh and Fulqet, the former in the Malësi e Madhe, Lumë, Martanesh, Zerqan and Labinot. In disputes about property the elders almost everywhere named the jurors. Whether they did or not seems to have depended mainly on whether they were local or from a distance. When local, they knew the character of each potential juror and could safely make their selection. When from a distance they did not have enough knowledge to choose, and preferred to leave the choice in the hands of the claimant. In Kurbin when house quarrelled with house or village with village about irrigation water, the claimant named twelve of the twenty-four compurgators required.

It did not much matter who were chosen as compurgators by a suspect. The practical certainty that they were his partisans and would clear him made their oath comparatively unimportant. For that reason they were not allowed to take it until the accuser's nominees had done so. In Mirditë the suspect was expected to announce their names to the elders before the ceremony, but elsewhere, as in Zerqan and the Malësi e Madhe, he had only to bring them along to the oath-taking. The only person he was forbidden to include was himself; 'though 100 compurgators are needed the suspect can't be one', said the law. If he liked he could even include a gipsy. He seldom or never did so, of course; regard for his own prestige prevented him from choosing so low a creature. On the other hand, it mattered very much who were named by the accuser. His quota took the oath first and so gave the others their cue. Their oath was weighty for several reasons. As the accuser's

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695 nominees they were supposedly free from bias in the suspect's
693 favour. Then they were very carefully selected.

Since the truth or falsity of the result of the ordeal depended in the first place on their probity, and since it had to be certain that one or more of them would refuse to sell his soul by swearing falsely to a criminal's innocence, their personal honour had to be beyond question—they must never have been caught, for instance, swearing a false oath or taking bribes. They had further to be free from ill-will against either party—they must not be malicious. It was also important that they should have some knowledge of the case at either first or second hand. Hence the accuser liked to name the suspect's relatives and neighbours, as in the case of Qazim of Labinot, men who came from the suspect's village if not his brotherhood. In the case of a stolen animal, for example, the relatives in particular might have seen the meat being eaten by the suspect's family or the bones being gnawed by his dog. In all cases of theft a near relative would know that the suspect was not at home at the time. But if any of the suspect's relatives were unscrupulous the accuser naturally preferred to nominate others. Better an ignorant but upright compurgator.

[5.3] Certain members of a tribe could not be compurgators. A gipsy, we have said, might serve on a suspect's behalf, though he might not be put to the oath to discharge himself of an accusation or to make good his claim to a property. Old men, boys and lunatics were never allowed to take oath either as suspects or as compurgators; nor were women except in very rare cases.

A Moslem hoxha or sheikh counted as only one compurgator, but, being regarded as a man of weight, tended to come high on the accuser's list. A Catholic priest was theoretically exempted by his office from being put to the oath as either suspect or compurgator, but if named as compurgator, he counted in his single person as equal to twenty-four. If a bajraktar of Mirditë or one of the Gjomarkaj family was chosen as compurgator in a case involving twenty-four, the court named twelve others and declared the bajraktar or Gjomarkaj equivalent to the remainder.

The suspect had the right to object to the accuser's nominees if they were not in a position to know the truth of the case, or to risk taking an oath to clear him. If his objection was obviously well founded, the accuser had to change his nominees. The suspect was also protected from ill-will on the part of a compurgator. As

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soon as they were named, the presiding authorities were legally bound to ask if he thought any of them would leave him in the lurch out of jealousy or spite. If he could produce reasonable evidence that any of them would, those he mentioned had to be changed. But only up to a maximum of three where twenty-four had been prescribed, and of two where twelve or eight had been. In Zerqan, however, the suspect could not raise objections to the accuser's nominees; in compensation the replacement rules were somewhat relaxed.

Men sometimes declined nomination. Those proud of their high reputation for uprightness disdained to be mixed up in a case where the suspect was notorious for evil-doing, even if it was known that for once he was wrongfully accused. Others would not lend their weight to a petty case and consented to take the oath only in serious matters, such as murder.

In most of the tribal areas, a man whose wife was pregnant could ask to be excused. It was believed that it would be a crime for him to take the oath. If he swore falsely, through inadvertence or not, his sin would be visited on the unborn child, bringing it into the world lame or with such deformity as six fingers instead of five. Sometimes he agreed to take the oath if it were postponed until after the child was born, but more often his brother or cousin took it in his stead.

Refusals for such personal reasons as the above almost always took place as soon as the nominations were made. No difficulty was made about accepting them and before the Assembly dispersed another compurgator was named in each recusant's place. Later refusals were never prompted by anything but disbelief, real or feigned, in the suspect, and were treated differently. At the same time as the compurgators were named, the authorities informed the suspect of the precise terms of the oath which he and his compurgators must take to vindicate him, and of the time of the ceremony. It then became his duty, not only to find his own quota of compurgators, but also to inform the accuser's compurgators that they had been nominated. His own never caused much difficulty. One or more of the others might decline. A compurgator who could not believe the suspect's oath dared not repeat it himself. Possibly the suspect was likeable enough but 'an oath can't be taken out of favouritism'. Other nominees did not refuse out of hand but waited until they had made some inquiries into the case and

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695 cross-questioned the suspect. Anyone who discovered that the man
693 was guilty sent in his refusal to go on the jury. Sometimes, too, a nominee was bribed or persuaded by the accuser into refusing. Or one might have a grudge against the suspect, and, though knowing him to be innocent, might seek to gratify his grudge by declining to take the oath.

On every occasion when a named compurgator eventually declined to serve, the suspect had to find two substitutes for him, and these had to satisfy the accuser. If the first pair suggested did not please him, the suspect had to search until he found two who did. In Çermenikë he was allowed twenty-four hours in which to find them. But if more than three out of a total of twelve or eight, or one out of a smaller number, declined, this provision did not apply. It was concluded that the oath could not be taken, and without more ado the suspect was pronounced guilty; he had in criminal cases to pay the legal penalty for the crime, and in disputes to forfeit the property he claimed. Occasionally, as in Zerqan, when the recusants were strongly suspected of refusing from motives of spite, an accuser might overlook their refusal and inform the suspect that he need not even find one at all. More often, however, a Zerqan accuser followed the usual practice and exacted two compurgators for every one that drew back. In Fulqet it was the Village Assembly, not the suspect, who selected substitutes for recusants.

The number of compurgators depended on the nature of the case. For such trifling matters as the theft of a pig, sheep or goat a 'little jury' of one man sufficed. Otherwise a jury consisted of anything from two to twenty-four men, according to the importance of the case. In murder cases there was a universal rule that twenty-four compurgators were necessary when the victim was a man and only twelve when she was a woman. In most other cases the number required varied with the locality. Although it might have been expected that economic factors would explain these variations, that where horses, for instance, were scarce, the case would be thought more important and the number of compurgators increased in proportion, this does not appear to have been so.

If a dog was killed in the farmyard in Lumë, twenty-four compurgators, the customary number for a murdered man, were required. The murder of a dog was as serious in Lumë as the murder of a man, as is further indicated by the fact that the same

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blood money had to be paid. Possibly, too, there was a feeling here as in other areas that the dog's owner might have emerged into the farmyard and been killed by its assassin. In all cases of damage to property the number of compurgators depended, not only on the value of the property, but also on the risk to the owner's life which the crime entailed. This risk depended largely on the site of the crime. If, for example, a house was set on fire, it was reckoned that one of the men in it might have lost his life; if not burned to death he might have been shot by the incendiary when trying to escape from the burning building. The oath in such a case was on that account with twenty-four compurgators. But if a haystack was fired six were enough. The risk to life was infinitesimal, and the value of the haystack much inferior to that of a house. Similar considerations graded thefts. If a house was burgled by a thief who went upstairs and stole bedding or kitchen utensils there were again twenty-four compurgators. For a thief wicked and desperate enough to enter another's house was an obvious killer. A thief who bored a hole in the wall of the farmyard and stole something from the yard was certainly 'a big thief', but so much less of a menace to his victim's life that he was put to the oath in Kurbin, Fulqet and Zerqan with only twelve compurgators. A thief who stole at a distance from the farm buildings needed only six in Fulqet. In Zerqan, however, even this form of theft was considered heinous enough to demand twelve compurgators.

Some of the same principles operated in thefts of sheep and goats. In Martanesh, the Malësi e Madhe and Shalë only one compurgator was required when a single sheep or goat was stolen at a distance from the farm buildings. The animal's value was small and the risk to a man's life infinitesimal. The number of compurgators increased, up to a maximum of twenty-four in Martanesh and twelve in Shalë, with the number of animals stolen. In Fulqet the grading was more detailed. If a single sheep or goat was stolen at a distance, the suspect, most exceptionally, required no compurgators to back him up; it was enough if he swore himself that he was innocent. If, however, the stolen animal was a bell-wether, the most valuable animal in the flock because it led it, he had to take the oath with six compurgators.[1] If an ordinary sheep or goat was stolen from the farmyard he had to find four compurgators, and if several animals were so stolen, twelve. In Labinot the law was

[1] Vide infra, p. 208.

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695 more severe, three to six compurgators being needed when only
693 one goat had been stolen in the most innocuous circumstances, while grazing in the forest. In Kurbin the law was still more drastic. Whether the stolen animal was an ordinary sheep or a bell-wether, an ordinary goat or a bell-goat, and whether the theft took place in the lonely forest or in the fold at the farm, the suspect had to take the oath with all his family, the gravest oath of all.

In disputes about property the number of compurgators mainly depended on its value. In Kurbin as many as twenty-four might be prescribed in irrigation disputes, this number probably reflecting the frequency with which such quarrels ended in murder. In Fulqet there were twenty-four compurgators in land disputes but in neighbouring Dibër twelve were enough. In Fulqet all the land is under water, but in Dibër very little can be irrigated. A rod of land in Fulqet is consequently more valuable—better worth fighting for—than a rod in Dibër.

The number of compurgators was not absolutely fixed by law and so might vary with the case. In all areas it was settled by the elders in disputes about property, but in criminal cases the usage differed. In Mirditë, Labinot and Godolesh the elders again said how many there should be, but in Malësi e Madhe, Fulqet and Martanesh the accuser had this privilege. Too often the number then depended on the degree of ill-feeling between the parties. The angrier the accuser was, the more compurgators he demanded. For the more they were, the more trouble the suspect had in persuading them to take the oath that would acquit him.

The compurgators, it should be mentioned, received no payment for their trouble except for the meal given them in most places by the suspect.

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[696] compurgators that the land was his. He took the oath, but the other refused to accept its verdict and the quarrel continued. The whole village denounced this as 'very shameful'.

Some losers were made to accept the verdict by the realization [558] that resistance would only plunge them into the difficulties of a blood feud, and others submitted in fear of losing face. The [696] elders had normally little machinery for enforcing the verdict. In one difficult case observed by the author in Çermenike however, they succeeded by the unusual device of putting both claimants to the oath. An old, forceful man had quarrelled about irrigation water with a young rascal who was his distant relative. The elders decided that if the young man could take the oath, he should have the water; if he could not, the old man must not think the water his but must take oath on another day that it was his by right. As the young man was a notorious liar, it was not expected that he would be able to muster the requisite number of compurgators. But to the general surprise he succeeded and took the oath. The elders decreed that he should have water for six hours every five days. The old man seemed at first to acquiesce in this decree, but later held up the water and turned out his own compurgators to take oath along with himself that it was his. But the elders would not countenance such disobedience, particularly as he had originally submitted to the verdict of his relative's oath; and by refusing to come and witness his oath they prevented it from being taken. Eventually he gave in, and allowed the young man to have water according to the oath that he had sworn as prescribed by the elders.

693 Another interesting case occurred in Dibër about 1935. Cen
696 Elezi was asked to arbitrate between two cousins in Çidhën in south Lumë, who were quarrelling about a piece of land. He settled a fee of twelve napoleons from each and accepted their silver boxes in pledge thereof. The boxes were found to be worth anything like his fee, so they were returned to their owners and he went to see the land and discover exactly where its boundaries lay. He found this out and said that this and their relationship made arbitration difficult. One of them, whom he named, must therefore take oath with six named and six unnamed compurgators that the land was his. First of all, however, he must set up the boundary stones in their proper places. On the day arranged Cen could not go himself to witness the oath. He

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sent the cousins word to that effect and said he was sending a deputy. When the latter arrived, he found the named cousin ready to take the oath but no humility stones in place. He refused to witness the oath because God's condition had not been observed. The matter was referred back to Gen, who said that since the cousin put to the oath had been unable to take it as enjoined, the other must have the land. If they did not wish to accept this judgement, let them bring him four napoleons each as his fee for the incomplete oath, and let them find another elder and he would pay his expenses; he was no guarantor to make them accept his judgement. The cousins prepared to accept his decision, but when the winner began to plough the land, the loser shot one of his men dead and wounded another; the feud continued for many years.

The oath derived its efficiency as a legal instrument from superstitious fear of punishment for perjury. God, as the Almighty, was naturally the chief agent of this punishment. 'Don't let God catch a perjurer', said the aphorism. In invocations the connexion between oath and Deity was simple. The oath-taker called God or one of His saints to witness to the truth of what he was about to swear, and did so in the full knowledge that if he angered Him by perjury, he must expect a manifestation of Divine wrath. There was a very definite belief that God was watching. In oaths sworn on a sacred object or building, such as 'By this good thing of the Lord', there was an indirect invocation of the Deity, but also while the oath-taker swore, he had to keep his hand on the sacred object—Gospel, crucifix, altar, church door, Koran, saint's grave—just as a witness in an English law court must take the oath with his hand on the Bible. This act established physical contact between the oath-taker and the Deity or saint with which the sacred object or building was associated. [illegible] [illegible] [illegible] above all others. Probably the reason why [illegible] punishment more certain. All over the Near East the principle of direct contact with holy things plays an important role. This is most familiar in cases of sickness, as when people knot rags to sacred graves or trees; the holy influences with which they have thus linked their persons penetrate their whole being and cure their maladies. Many instances will be found in the author's book *Christianity and Islam under the Sultans*. But suppliants for such favours must placate the holy influences with prayers or

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the accuser come and witness their oath or produce a *këpucar*. An accuser who had good reason to be dissatisfied with the suspect's acquittal was entitled to pursue his inquiries and, securing fresh evidence of the suspect's guilt from an eye-witness, to lay this before the elders with a demand that the case should be reconsidered. Indeed, many elders after delivering a verdict of "not guilty" reminded the accuser that if he was dissatisfied he was at liberty to find a *këpucar*. He could not, of course, have the suspect put to the oath a second time; "oath upon oath" was not allowed by the law.

An eye-witness had always to come forward of his own accord; the accuser could not go and look for him directly. In ordinary cases, the accuser let it be known through private channels that he would be glad to find one, but in the cases of arson and murder of a dog already mentioned, the Village Assembly might issue a public appeal for information. No time limit was ever set. Information given a year or more after the crime had been committed was treated as seriously as if it were only a day old.

In every type of case the witness first approached the accuser saying, that he had found the stolen property, the murderer, or the falsity of the oath as the case might be. The accuser then had to go to the suspect and demand restitution. In Mirditë, at least, he had to be accompanied by two friends who were sometimes asked afterwards to confirm that he had warned the suspect. If the latter refused to make atonement, the accuser had to warn him that he had a witness. If the suspect persisted in his refusal, saying, "Produce your witness", the accuser then, but only then, settled the witness's fee and secured his information. The elders then formed a committee for the purpose of cross-examining the witness. In Dukagjin the committee was composed of two men appointed by the suspect and two by the family of the accuser. In Mirditë the committee was formed by the [illegible] and one to four headmen, the qualities which such personages were believed to inherit along with their position were thought sufficient equipment for dealing with a witness. Elsewhere one elder was considered enough in simple cases; he was chosen by the suspect at the bidding of the accuser, by the two together, or by the other elders.

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[Laws enacted in Kastrat and Bajzë on Nov. 1, 1892]

2. Wounding a man means a fine of 1500 grosh and 12 rams.

3. Whoever fines another without doing it through a General Assembly and by common consent, will be fined 1000 grosh and 10 rams.

4. Whoever disputes with another or calls him names or aims his rifle at him in the following places—Berg, Shpellës, Vrri, and Kmet Hi—will be fined 1000 grosh and 10 rams.

5. Whoever breaks down another's hedge in order to make a path for himself must pay 150 grosh (3 rams) to the owner of the hedge.

6. Whoever murders anyone on the high road will be fined 3000 grosh and 24 rams.

7. Whoever robs another's house or sheepfold will be fined 500 grosh and 5 rams.

8. Whoever dishonours a woman or an engaged girl will be fined 3000 grosh and 10 rams.

9. Whoever does not wish to engage elders and goes away saying 'May I never forgive you' will be fined 500 grosh and 5 rams.

10. Whoever lets his animals graze on another's land will be fined 250 grosh and 3 rams.

11. A man who will not hear of fencing in his portion of land, going halves in the fence with his neighbour, will be fined 250 grosh and 3 rams.

12. A man who does not meet his obligations at the term fixed will be fined 23 grosh.

13. Whoever steals an ox, a cow or a horse in his own village will be fined 500 grosh and 5 rams.

14. A man who does not respond to the village's call to come to a General Assembly or some other requirement of the village will be fined 250 grosh.

15. A man who closes a gap which has always been in the hedge will be fined 150 grosh.

16. The chiefs are to meet in General Assembly once a year, one week after St John's Day. Whoever does not conform to this decision will be fined 100 grosh.

17. [illegible]

18. Whoever murders his adversary after [illegible] will be [illegible] from the village and turned into a ghost.

19. A dog which enters a vineyard with a wooden collar on its neck may not be killed. A dog which enters a vineyard or field without a wooden collar may be killed.

20. Whoever brings a house-dog with him to church or to Shpellë will be fined 50 grosh.